

Approved February 28, 1989

Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Don Sallee at
Vice Chairperson

8:06 a.m./p.m. on February 21, 1989 in room 423-S of the Capitol.

All members were present except: quorum present.

Committee staff present:

Don Hayward, Revisor
Raney Gilliland, Research
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

James Powers, Department of Health and Environment
Pat Casey, Council, Department of Health and Environment

List of others present is on file.

Vice-Chairman Sallee called on staff for comments concerning S.B. 94 and S.B. 122 regarding storage tanks and the trust fund.

Mr. Hayward briefed the committee on the substitute bill that would be printed incorporating S.B. 94 and S.B. 122.

Vice-Chairman Don Sallee called on Jim Powers, Kansas Department of Health and Environment.

Mr. Powers and Pat Casey for Kansas Department and Environment explained the proposed amendment. The balloon copy of the bill is (Attachment I). They stated the amendment has the approval of EPA.

Vice-Chairman Sallee asked for action on S.B. 120 and S.B. 240.

Senator Hayden expressed concern with deviating from the calendar, and bring up S.B. 120 and S.B. 240. The chair ruled that action on S.B. 120 and S.B. 240 was in order because the bills had been heard previously.

A motion was made by Senator Hayden to adopt the proposed amendments as they appear in the balloon form. Senator Martin seconded the motion. The motion carried.

A motion was made by Senator Hayden to report S.B. 120 as amended favorable for passage. Senator Langworthy seconded the motion, and the motion carried.

The vice-chairman referred to S.B. 240 the abandon channel bill. A motion was made by Senator Martin to report S. B. 240 favorable for passage. Senator Hayden seconded the motion, and the motion carried.

The meeting adjourned. The next meeting will be on February 22, 1988.

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 21, 1989

PLEASE PRINT GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
Joe Lieber	Ks Co-op Council
Dale Lambley	K S B A
FRANCES KASTNER	Ks Food Dealers Assn
DEBBIE McCASKILL	K S DEPT. OF COMMERCE
Ron Hamerschmidt	*KDHE
Dennis Murphey	KDHE
Dave Cortiss	LKM
Kathleen Warren	DOB
Terry Leatherman	KCCI
DAN McGEE	CENTEL
JERRY Cooper	KB & E
JEFF SONNICH	KLSI
CHARLES NICOLAY	KOMA
ED SCHAUB	COSTAL CORP
Wilbur Leonard	Comm Ks Farm Org
MIKE BEAM	Ks. Livestk. Assn.
Kathy Taylor	Kans Bankers Assn.
Tom Whitaker	Ks Motor Carriers Assn.
Rob Holger	K T A
Bob Corkins	Ks. Hospital Assn.

SENATE BILL No. 120

By Committee on Energy and Natural Resources

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AN ACT relating to penalties for unlawful discharge of sewage; amending K.S.A. 65-167, and 65-170e, and repealing the existing sections. 65-165, 65-171d and

Be it enacted by the Legislature of the State of Kansas: New Sec. 1. (See attachment 65-165)

Section 1. K.S.A. 65-167 is hereby amended to read as follows: 2.

65-167. Upon conviction, the penalty for the willful or negligent discharge of sewage into or from the sewer system of any municipality, township, county or legally constituted sewer district by the public authorities having, by law, charge thereof or by any person, company, corporation, institution, municipality or federal agency, into any of the waters of the state without a permit, as required by this act, or in violation of any term or condition of a permit issued by the secretary of health and environment, or in violation of any requirements made pursuant to K.S.A. 65-164, 65-165 or 65-166, and amendments thereto, shall be not less than \$2,500 and not more than \$25,000, and a further penalty of not more than \$25,000 per day for each day the offense is maintained. The penalty for the discharge of sewage into or from any sewage system into any waters of the state without filing a report, in any case in which a report is required by this act to be filed shall be ~~\$1,000~~ not less than \$1,000 and not more than \$10,000 per day for each day the offense is maintained.

Sec. 2. K.S.A. 65-170e is hereby amended to read as follows: 3.
65-170e. (a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

Attachment I
SFR
2/21/89

44 (b) Any person having an interest which is or may be affected
 45 shall have the right to intervene in any civil actions brought under
 46 this section or any administrative actions brought under K.S.A. 65-
 47 170d, and amendments thereto, which seek:

48 (1) Restraint of persons from engaging in unauthorized activity
 49 which is endangering or causing damage to public health or the
 50 environment;

51 (2) injunction of threatened or continuing violations of this act,
 52 regulations promulgated thereunder and permit conditions;

53 (3) assessment of civil penalties for violations of the act, rules
 54 and regulations promulgated thereunder, permit conditions or orders
 55 of the director of environment or secretary of health and
 56 environment.

57 ~~Sec. 3. K.S.A. 65-167 and 65-170e are hereby repealed.~~ New Sec. 4 (See attachment 65-171d)
 5. 65-165, 65-167, 65-170e, and 65-171d

58 ~~Sec. 4. This act shall take effect and be in force from and after~~ 6.
 59 its publication in the statute book.
 60

K.S.A. 65-171b,

K.S.A. 65-164,

K.S.A. 67-171d,

or article 6 of chapter 77 of the Statutes
 Annotated to enforce the provisions of the National
 Pollutant Discharge Elimination System program as
 approved by the administrator of the United States
 environmental protection agency pursuant to sections
 318, 402, and 405 of the Clean Water Act, as in effect
 on January 1, 1989.

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65-165. Permit for discharge of sewage: recordation; revocation or modification; notice; new permit. Upon application made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, or any person, company, corporation, institution, municipality or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, or the extension of a sewer system and whenever it is the secretary's opinion that the general interests of the public health would be served thereby, or that the discharge of such sewage would not detract from the quality of the waters of the state for their beneficial uses for domestic or public water supply, agricultural needs, industrial needs, recreational needs or other beneficial use and that such discharge meets or will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and amendments thereto as in effect on January 1, 1984, the secretary of health and environment shall issue a permit for the extension of a sewer system or for the discharge of sewage, or both, and shall stipulate in the permit the conditions on which such discharge will be permitted and shall require such treatment of the sewage as determined necessary to protect beneficial uses of the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and may require treatment of the sewage in accordance with rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

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Every such permit for the discharge of sewage shall be revocable, or subject to modification and change, by the secretary of health and environment, upon notice having been served on the public authorities having, by law, the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed two years, and if the length of time is not specified in the permit it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary of health and environment, the right to discharge sewage into any of the waters of the state shall cease and terminate, and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided.

171d. Prevention of water pollution; standards; permits; exemption; orders; hearings; appeals; fees; right of ingress and egress. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Clean up pollution resulting from oil and gas activities regulated by the state corporation commission; (2) protect the soil and waters of the state from pollution resulting from (A) oil and gas activities not regulated by the state corporation commission or (B) underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas; (3) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (4) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and the ~~1981~~ amendments thereto, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments thereto, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond of waters therefrom.

as in effect on January 1, 1989

n regulated by the state corporation commission or from underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas or that storage or disposal of salt water or oil not regulated by the state corporation commission or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such activity, underground storage reservoir or surface pond. Such order shall take effect 10 days after service upon the owner, operator, contractor or agents thereof. Any person aggrieved by such order may within 10 days of service of the order request a hearing on the order.

(2) Hearings may be conducted by the secretary or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless review is sought under paragraph (4) of this subsection.

(3) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order or other instrument by registered or certified mail directly to the person affected at such person's last known post office address as shown by the files or records of the secretary.

(4) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.

(g) Agents of the secretary shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 120

"AN ACT relating to penalties for unlawful discharge of sewage; amending K.S.A. 65-167 and 65-170e and repealing the existing sections."

Be amended:

On page 1, before line 20, by inserting a new section to read as follows:

"Section 1. K.S.A. 65-165 is hereby amended to read as follows: 65-165. Upon application made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, or any person, company, corporation, institution, municipality or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, or the extension of a sewer system and whenever it is the secretary's opinion that the general interests of the public health would be served thereby, or that the discharge of such sewage would not detract from the quality of the waters of the state for their beneficial uses for domestic or public water supply, agricultural needs, industrial needs, recreational needs or other beneficial use and that such discharge meets or will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and amendments thereto as in effect on January 1, 1984 1989, the secretary of health and environment shall issue a permit for the extension of a sewer system or for the discharge

of sewage, or both, and shall stipulate in the permit the conditions on which such discharge will be permitted and shall require such treatment of the sewage as determined necessary to protect beneficial uses of the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and may require treatment of the sewage in accordance with rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

Every such permit for the discharge of sewage shall be revocable, or subject to modification and change, by the secretary of health and environment, upon notice having been served on the public authorities having, by law, the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed two years, and if the length of time is not specified in the permit it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary of health and environment, the right to discharge sewage into any of the waters of the state shall cease and terminate, and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided.";

Also, on page 1, in line 20, by striking "Section 1" and inserting "Sec. 2"; in line 38, by striking "2" and inserting "3";

On page 2, in line 46, after "section" by inserting "or K.S.A. 65-171b, and amendments thereto,"; also, in line 46, after "K.S.A." by inserting "65-164,"; in line 47, before "and" by

inserting "65-171d,"; also, in line 47, before "which" by inserting "or article 6 of chapter 77 of the Kansas Statutes Annotated to enforce the provisions of the national pollutant discharge elimination system program as approved by the administrator of the United States environmental protection agency pursuant to sections 318, 402 and 405 of the clean water act, as in effect on January 1, 1989,";

Also, on page 2, after line 56, by inserting a new section to read as follows:

"Sec. 4. K.S.A. 1988 Supp. 65-171d, is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Clean up pollution resulting from oil and gas activities regulated by the state corporation commission; (2) protect the soil and waters of the state from pollution resulting from (A) oil and gas activities not regulated by the state corporation commission or (B) underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas; (3) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (4) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and ~~the 1981~~ amendments

thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments thereto, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from oil and gas activities not regulated by the state corporation commission or from underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas or that storage or disposal of salt water or oil not regulated by the state corporation commission or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the

state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such activity, underground storage reservoir or surface pond. ~~Such order shall take effect 10 days after service upon the owner, operator, contractor or agents thereof.~~ Any person aggrieved by such order may within 10 15 days of service of the order request in writing a hearing on the order.

~~(2) Hearings may be conducted by the secretary or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless review is sought under paragraph (4) of this subsection.~~

~~(3) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order or other instrument by registered or certified mail directly to the person affected at such person's last known post office address as shown by the files or records of the secretary.~~

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

~~(4)~~ (3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution

mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.

(g) Agents of the secretary shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.";

Also, on page 2, by striking all in line 57, and inserting a new section to read as follows:

Sec. 5. K.S.A. 65-165, 65-167 and 65-170e, K.S.A. 1987 Supp. 65-171d, as amended by section 181 of chapter 356 of the laws of 1988, and K.S.A. 1988 Supp. 65-171d are hereby repealed.";

Also, on page 2, in line 58, by striking "4" and inserting "6";

In the title, in line 16, after "ACT" by inserting "concerning water supply and sewage;"; in line 17, by striking "65-167 and 65-170e" and inserting "65-165, 65-167 and 65-170e and K.S.A. 1988 Supp. 65-171d"; in line 18, before the period by inserting "; also repealing K.S.A. 1987 Supp. 65-171d, as amended by section 181 of chapter 356 of the laws of 1988";

And the bill be passed as amended.

Chairperson

The Honorable Ross Doyen, Chairperson
Senate Committee on Energy and Natural Resources
Senate Chamber
Third Floor, Statehouse


Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 240 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 240 is respectfully submitted to your committee.

SB 240 amends KSA 82a-209 pertaining to the sale of abandoned river channels by the Secretary of State. Existing state law requires the Secretary of State to survey the land that is abandoned or no longer used as a channel for a stream and to sell such property at the best price obtainable to any person desiring to buy the property. SB 240 would allow the Secretary of State to convey all or any part of the abandoned channel to the Kansas Department of Wildlife and Parks.

The bill has no fiscal impact. There could be a decrease in receipts to the State General Fund from the sale of property which consists of an abandoned navigable stream channel. However, the receipts that would be realized from such a sale cannot be estimated at this time.


Michael F. O'Keefe
Director of the Budget

MFO:REK:sm

cc: Bob Meinen, Wildlife and Parks

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REPORTS OF STANDING COMMITTEES

2-21-89

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 240

Sayin

"AN ACT concerning the sale of land in abandoned channels of navigable waters; amending K.S.A. 82a-209 and repealing the existing section."

Be passed.

Chairperson